



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 070047

Petitioner, Anna Shine, applied to the Board of Appeals for zoning relief to convert an existing single family attached residence into a two family attached residence at 47 Addington Road. On July 26, 2007 the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed September 20, 2007 at 7:15 p.m. at the, Main Library, second floor as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published August 30 and September 6, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: SHINE, Anna

Location of Premises: **47 ADDINGTON RD BRKL**

Date of Hearing: **09/20/2007**

Time of Hearing: **07:15 p.m.**

Place of Hearing: **Henniman Hall, 2nd Floor, Main Library**

A public hearing will be held for a special permit and/or variance from:

- 1) 5.05, Conversions; Special Permit Required.**
- 2) 5.30, Maximum Height of Buildings.**
- 3) 5.43, Exceptions to Yard and Setback Regulations; Special Permit Required.**
- 4) 5.60, Side Yard Requirements; Variance Required.**
- 5) 5.61, Projections into Side Yards; Variance Required.**
- 6) 5.62, Fences and Terraces in Side Yards; Variance Required.**
- 7) 8.02.2, Alteration or Extension; Special Permit Required.**
- 8) Board of Appeals Decision, case# BOA020034, 25 October, 2002; Modification Required**

of the Zoning By-Law to convert an existing single family attached residence into a two family attached residence per plans at **47 ADDINGTON RD BRKL.**

Said Premise located in a **M-1.0** District.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Diane R. Gordon
Harry Miller
Bailey S. Silbert**

At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing were Board Members Harry Miller, Chairman, Bailey Silbert and Lawrence Kaplan.

Petitioner Anna Shine was represented at the hearing by her architect, Ms. Katherine MacPhail of dEmios, 19 Hawthorne Street, Belmont, MA 02478 and her brother, Thomas Shine.

Ms. MacPhail described the structure as one of a group of 10 three-story brick row houses located on the westerly side of Addington Road between Winthrop Road and Colbourne Crescent. Of these ten properties, three, including this building, are single family residences, one is a two-family dwelling and the remaining six contain three units each. This site has a significant downward slope from front to rear from Addington Road towards Rawson Road. As a result, the basement level of this property is below grade on Addington Road and at grade in the rear yard. Open space on this lot consists of landscaped area in both the front and rear yards. Parking is provided to the rear of the building with a single car garage and three parking spaces. A passageway that runs from Claflin Path to Schick Park provides access to the parking area and serves as the rear parking access road for most of the buildings fronting on both Addington and Rawson Roads. This passageway varies from 10 feet to 20 feet in width; however the entire section of the access road behind this building is 20 feet wide.

Ms. MacPhail said that the applicant, Anna Shine, proposes to convert this property from a single-family dwelling to a two-family dwelling by reconfiguring an entryway and adding a new wrought iron or painted steel egress stair system on the rear façade of this building to provide a second means of egress. The actual alterations include: closing a door opening on the second floor; installing a new exterior door on the third floor; constructing a stairway leading from the third floor to the ground level, with access provided from the third and first floors and requiring the reconstruction of a deck currently serving the first floor. These alterations to the property would enable it to become a two-family dwelling consisting of one four-bedroom unit and one two-

bedroom unit. The stairs would project approximately 11 feet 3 inches from the building's rear wall along the side lot line, and be approximately 6 feet wide. The reconstructed deck would remain the same width, extending approximately 8 feet 9.5 inches from the new stair structure toward the center of the building, and projecting 5 feet from the building's rear wall.

Ms. MacPhail said she needed relief from Section 5.05, conversions, 5.30, maximum height of buildings, 5.43, exceptions to yard and setback requirements, 5.60, side yard requirements, 5.61, projections into side yards, 5.62, fences and terraces in side yards and 8.02.2, alteration or extension. The Chair asked for a visual representation of the project and Ms. MacPhail and Thomas Shine presented an artist's rendition to gain a feel for the project. Mr. Shine represented that there is plenty of precedent along Addington Road for projects such as this, numbers 49 and 53 Addington are similar.

The Chair then asked whether anyone wished to speak in favor or in opposition to the proposal. No-one responded.

Planner, Lara Curtis, then reviewed the relief required for the project:

Section 5.05 – Conversions

Section 5.30 – Maximum Height of Buildings

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements: The By-law allows buildings to be built to the side lot line by right if, on the adjoining lot, a principal building with no setback from that lot line already exists. Otherwise, two-family dwellings must meet the side yard formula of $10 + L/10$ feet. *This dwelling is attached on both sides the length of its side walls, and therefore has no setback from the side lot line where it is attached to the dwelling.*

Section 5.61 – Projections into Side Yards: Bays and porches, balconies, open fire escapes, chimneys and flues, all of which occupy not over $1/3^{\text{rd}}$ the length of the side wall, may project into a required side yard not more than one-third its width and not more than four feet in any case...In no case shall any such projection come within three feet of any side lot line. *The stair structure proposed to be built onto the dwelling's rear wall would be built up to the side lot line, therefore*

needing relief from the required setback (for projections) of at least two thirds the normal side yard setback of 10 feet ($10 + L/10$, with $L=0$), or 6.7 feet.

Section 5.62 – Fences and Terraces in Side Yards: Uncovered porches or decks may not extend into the side yard more than 50% of the required yard setback but in no case closer than six feet to the property line. *The stair structure proposed to be built onto the dwelling's rear wall involves a deck for the first floor, which currently exists but is being reconstructed under this proposal. The deck would need relief from the required setback of at least 6 feet.*

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Maximum height of buildings	40 ft.	43 ft.	43 ft.	<u>Pre-Exist. / Non-Conf.*</u> <u>Variance /</u> <u>Special Permit**</u>
Projections into Side Yards (stairs)	6.7 ft.	n/a	0 ft.	Variance / Special Permit**†
Fences/Terraces in Side Yards (deck)	6 ft.	1.5 ft.	0 ft.	<u>Variance /</u> <u>Special Permit**†</u>

*Pre-existing non-conforming condition; height at front of building is 32 feet and 43 feet at the rear.

Maximum height of stair structure would be approximately 41 feet from grade.

**Under Section 5.05, when a dwelling is converted to create additional dwelling units in an M district, the Board of Appeals may waive by special permit any dimensional requirements except minimum lot size, as long as no previously existing non-conformity is increased.

† Under Section 5.43, the Board of Appeals may waive yard and setback requirements by special permit when a counterbalancing amenity is provided.

Section 8.02.2 – Alteration or Extension: Special permit required.

Ms. Curtis said that the Planning Board supports this proposal to convert the single-family dwelling into a two-family dwelling, if changes to the new exterior stairway are made. The proposal is consistent with many of the other attached dwellings in the same block and in the neighborhood as well as with the property's M-1.0 zoning. The modifications to the dwelling needed to convert the building are minor, should not negatively impact neighboring properties and will not be seen from the street. Additionally, all required parking for the units will be provided on site. But some changes in the proposal's design are needed. The proposed rear stairs are currently designed to be used as a secondary egress only, but with the dwelling's parking located to the rear of the building;

the rear egress is likely to be frequently used by the new dwelling's occupants. Therefore, the stairs should be re-designed to be more user friendly and provide for safer and more confident passage. This would require a stair tread at least 12 inches wide, not the 8-inch-tread that is currently proposed. Making this change in the design may result in a larger stairway than that currently proposed, but the Board feels it would provide for a more appropriate egress. Additionally, the submitted plans should be re-drawn to show abutting structures and their architectural features, such as window locations, and the rear yard's landscaping elements. The applicant should return to the Planning Board with new plans. Ms. MacPhail submitted revised plans after the Planning Board had issued its recommendations. The plans, *Shine Residence, 47 Addington Road*, are dated 4 June, 2007, revised, 20 September 2007 were displayed for the Board of Appeals. There are twelve pages in this set of plans. Therefore, the Planning Board recommends approval of the proposal and the zoning relief sought, subject to the applicant returning to the Planning Board with new stairway plans, indicating a 12-inch stair tread and showing both side elevations, and additional information regarding abutting structures' features and rear yard landscaping, and subject to the following conditions:

1. Prior to issuance of a building permit, final site and elevation plans shall be submitted to the Planning Board for review and approval.
2. Prior to issuance of a certificate of occupancy, the parking spots at the rear of the building shall be striped or otherwise delineated.
3. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the stair structure, stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board member, Bailey Silbert, an architect, referred to the stair section in the single and two family Building code and stated that the required tread depth is 9 inches minimum and the maximum rise height is 8.25 inches. He said that although the former plan met the Building Code requirements the revised plan would make a more “comfortable” stair.

The Chair called on Frank Hitchcock representing the Building Department. He said that **Section 5.05** of the by-law requires that when you create additional dwelling units you must meet all dimensional requirements just as if you were building a new building on a vacant lot. He said that a Special Permit is required under **Section 5.05**. He said the Board may waive any dimensional requirement except lot size, providing that no previously existing nonconformity to such requirements is increased and provided that other requirements for conversion are met. A Special Permit is required under **Section 5.43** because the new stairway does not meet the side yard setback requirements of the by-law. A Special Permit under **Section 8.02.2** is required because of existing non-conforming dimensional requirements in the structure and by altering the structure a Special Permit is required. Mr. Hitchcock stated that the Building Department had no objections to the proposal, the relief required or the conditions recommended by the Planning Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits under **Section 5.05**, **Section 5.43** and **Section 8.02.2** of the Zoning Bylaw. The Board made the following findings pursuant to **Section 9.05**:


- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Therefore, the Board voted unanimously to grant all the Special Permit relief with the following conditions:


1. Prior to issuance of a building permit, final site and elevation plans shall be submitted to the Planning Board for review and approval.
2. Prior to issuance of a certificate of occupancy, the parking spots at the rear of the building shall be striped or otherwise delineated.
3. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations of the stair structure, stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals


Harry S. Miller

Filing Date: October 12, 2007

A True Copy:

ATTEST


Patrick J. Ward
Clerk
Board of Appeals

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